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FEB 04 2003

**OFFICE OF PETITIONS**

In re Application of  
George Brainard  
Application No. 09/853,428  
Filed: May 10, 2001  
Attorney Docket No. BRA01-NP002

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DECISION ON PETITION

This is a decision on the petition filed January 21, 2003, to revive the above-identified application. Petitioner requests revival based upon an unintentional delay in responding to the Office action under 37 CFR 1.137(a).

The petition under 37 CFR 1.137(a) is dismissed.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed June 6, 2002. The Office action set a three (3) month period for reply. No extensions of time having been obtained under 37 CFR 1.136(a), this application became abandoned on September 7, 2002. A Notice of Abandonment was mailed on December 10, 2002.

Petitioner asserts that the delay was unavoidable because Petitioner has not received the June 6, 2002, Office action.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by (1) a proposed response to continue prosecution of the abandoned application, or filing of a continuation application, unless either has been previously filed; (2) the petition fee required by 37 CFR 1.17(l); (3) an adequate verified showing of the cause of unintentional delay; and (4) a terminal disclaimer and fee. This petition lacks items (1) and (3) above.

As to item (1), Petitioner has not provided a response to the Office action.

As to item (3), an allegation that an Office action was not received may be considered as a petition for the withdrawal of the holding of abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish nonreceipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.

2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.<sup>1</sup>

A review of the record indicates no irregularity in the mailing of the June 6, 2002 Office action, and in the absence of any irregularity there is a strong presumption that the communication was properly mailed to the applicant at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communication was not in fact received at the correspondence address of record.

Petitioner's deposit account has been charged an additional \$30.00 as authorized in the instant petition which represents the balance due for a petition to revive an unintentionally abandoned application.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

By facsimile: (703) 308-6916  
Attn: Office of Petitions

By hand: Office of Petitions  
2201 South Clark Place  
Crystal Plaza 4, Suite 3C23  
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0014.

  
Derek L. Woods  
Petitions Attorney  
Office of Petitions

Enclosure: Office Action of June 6, 2002.

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<sup>1</sup> See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).